BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is by and between DI & Associates ("DI") and the Wisconsin Department of Employee Trust Funds ("ETF"), acting on behalf of the State of Wisconsin.

RECITALS:

WHEREAS, ETF and DI have executed a contract, ETB0032, pursuant to which DI provides certain services, ("Underlying Contract"), and in connection with those services ETF discloses or allows the disclosure to DI of certain information that is subject to protection by the Health Insurance Portability and Accountability Act of 1996, ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act of 2009 as passed as part of ARRA ("HITECH") and their implementing regulations, Title 45, Parts 160 through 164 of the Code of Federal Regulations, as well as by laws and administrative rules of the State of Wisconsin;

WHEREAS, with respect to its activities pursuant to the Underlying Contract, DI is ETF's Business Associate as that term is defined by HIPAA;

WHEREAS, it is the intent of this Agreement to comply with state law and with the federal regulations implementing HIPAA and HITECH concerning the privacy, security and transaction standards in 45 C.F.R. Parts 160 to 164, inclusive, and

WHEREAS, ETF and DI agree to incorporate the terms of this Agreement into the Underlying Contract and agree to incorporate this Agreement into any associated addenda and contract extensions, in order to comply with HIPAA, HITECH and state law.

NOW, THEREFORE, in consideration of these premises and the mutual promises and agreements hereinafter set forth, ETF and DI hereby agree as follows:

DEFINITIONS:

It is the intent of this Agreement to comply with the federal regulations implementing HIPAA and HITECH concerning the privacy, security and transaction standards, including the definitions in 45 C.F.R. Parts 160 to 164, inclusive, as applicable. This Agreement also addresses compliance with Wisconsin laws on confidentiality of personal information. In particular, the following words and phrases in this Agreement have the meanings set forth below, unless the context clearly requires otherwise:

"ARRA" means the American Recovery and Reinvestment Act of 2009.

"Individual Personal Information" has the meaning set forth in Wis. Admin. Code § ETF 10.70 (1).

"Medical Record" has the meaning set forth in Wis. Admin. Code § ETF 10.01 (3m).

"Personal Information" is information that can be used to identify a person and includes, without limitation, **Individually Identifiable Health Information, Individual Personal Information, Medical Records and Protected Health Information**.

"Third Party" means a party other than a subcontractor or agent that ETF has approved.

PART I – OBLIGATIONS OF DI

A. **Uses and Disclosures.** DI may use or disclose Personal Information it creates for or receives from ETF or any other DI of ETF for only the following, limited purposes:

1. Permitted Uses and Disclosures of Personal Information. DI is permitted to use and disclose Personal Information:

   (a) To perform services in accordance with the Underlying Contract.

(b) Subject to the limitations on Uses and Disclosures outlined in this Business Associate Agreement, specifically including the State Law Restrictions in Part I, Section B, DI is authorized to use and disclose Personal Information as necessary for DI's proper management and administration, to carry out DI's legal responsibilities, and as otherwise Required by Law.

2. Prohibition on Unauthorized Use or Disclosure. DI will not use or disclose Personal Information it creates for or receives from ETF or from another Business Associate of ETF, except as authorized or required by this Agreement or as Required by Law or as otherwise authorized in writing by ETF, including, without limitation, marketing and solicitation of business outside the Underlying Contract and disclosure of such information to third-parties.

3. Compliance with Regulations. DI will comply with:

   (a) 45 C.F.R. Parts 160 to 164, inclusive, as applicable to a "Business Associate" of a "Covered Entity" and any other regulations adopted pursuant to HIPAA and HITECH; and
   (b) Applicable State Law not preempted by 45 C.F.R §§ 160.201 to 160.203, inclusive, or any other federal law.

4. State Law Restrictions. DI shall comply with Wis. Stat. §§ 40.07 and 134.98 with respect to information DI creates for or receives from ETF or from any other DI of ETF. In particular:

   (a) Any Third Party request, including a subpoena, for disclosure of Personal Information, including, without limitation, Medical Records or Individually Identifiable Health Information, shall be referred to ETF in a timely manner; and
   (b) DI shall not disclose to any Third Party Individual Personal Information which ETF itself may not disclose pursuant to Wis. Stat. § 40.07(1), or of Medical Records that ETF itself may not disclose pursuant to Wis. Stat § 40.07(2).

B. Compliance with Standard Transactions.

1. Standard Transactions Conducted By DI. If DI conducts, in whole or in part, transactions, for or on behalf of ETF that are covered by 45 C.F.R Part 162, DI will comply with the applicable HIPAA transactions standards, and will require any subcontractor or agent involved with the conduct of such transactions to provide reasonable assurances, evidenced by written contract, that it will comply with each applicable requirement of 45 CFR Part 162. Further, DI will require that each of its subcontractors or agents provide assurances, by written contract, that it will not enter into a Trading Partner Agreement, in connection with its conduct of Standard Transactions for and on behalf of ETF that:

   (a) Changes the definition, data condition, or use of a data element or segment in a Standard Transaction;

   (b) Adds any data element or segment to the maximum data set;

   (c) Uses any code or data element that either is not in the Standard Transaction's implementation specification or is marked "not used" by the Standard Transaction's implementation specifications;

   (d) Changes the meaning or intent of the Standard Transaction's implementation specifications; or

   (e) Otherwise violates 45 CFR §162.915.

2. Communications Between the Parties. Communications between ETF and DI that are required to meet HIPAA transactions standards will meet the standards set by 45 CFR Part 162. For all other communications, the forms, tape formats or electronic formats used shall be those mutually agreed upon by ETF and DI.

C. **Information Safeguards.** DI will develop, implement, maintain and use reasonable and appropriate administrative, technical and physical safeguards to preserve the integrity and confidentiality of Personal Information under the control of DI, and to prevent intentional or unintentional non-permitted or violating use or disclosure of Protected Health Information. DI will document and keep these safeguards current and furnish documentation of the safeguards to ETF upon request. These safeguards will comply with HIPAA, HITECH and their implementing regulations.

D. **Reporting of Breach, Improper Use or Disclosure and Security Incidents.**

Reporting of Breach, Improper Use or Disclosure. DI will report to ETF the discovery of any breach, use or disclosure of Personal Information, not allowed by this Agreement or in violation of 45 C.F.R. Part 164 or HITECH. An occurrence of a breach, improper use or disclosure or security incident is considered to be discovered as of the first day on which such occurrence is known to DI, or, by exercising reasonable diligence, would have been known to DI.

1. DI shall provide notice to ETF of the occurrence. The notice shall include the identification of each individual whose unsecured Personal Information has been, or is reasonably believed by DI to have been accessed, acquired, or disclosed during such occurrence.
2. Within one business day of the discovery, DI shall notify ETF's Privacy Officer. DI shall immediately conduct an investigation and report in writing within four business days the following information:
    (a) The name and contact information of each individual whose Personal Information has been or is reasonably believed to have been accessed, acquired or disclosed during the occurrence.
    (b) A brief description of what happened, including the date of the occurrence and the date of the discovery of the occurrence, if known.
    (c) A description of the types of Personal Information that were involved in the occurrence (e.g., full name, date of birth, Social Security number, account number).
    (d) A brief description of what DI is doing to investigate the occurrence, to mitigate losses and to protect against further occurrences.
    (e) The actions DI has undertaken or will undertake to mitigate any harmful effect of the occurrence.
    (f) A corrective action plan that includes the steps DI has taken or will take to prevent similar occurrences.
3. At ETF's option, DI will be responsible for notifying individuals of the occurrence when ETF requires notification and to pay any cost of such notifications, as well as any costs associated with the breach, improper use or disclosure, including, without limitation, credit monitoring services. DI must obtain ETF's approval of the time, manner and content of any such notifications, provide ETF with copies of the notifications, and provide the notifications within sixty (60) days after discovery of the breach, improper use or disclosure. DI shall have the burden of demonstrating to ETF that all notifications were made as required, including any evidence demonstrating the necessity of any delay beyond the 60 day calendar notification to affected individuals after the discovery of the breach by ETF or DI.

E. **Duty to Mitigate Effect of Misuse or Unauthorized Disclosure and Notify Members of Unauthorized Acquisition:**

1. DI will mitigate, as required by HIPAA, HITECH, state law and this agreement, to the extent practicable, any harmful effect that is known to DI of a breach, improper use or unauthorized disclosure reported pursuant to subsection D of this section.

2. DI will comply with the provisions of Wis. Stat. §134.98 and any subsequently adopted state law regarding mitigation of privacy breaches, and shall ensure by written contract that any subcontractor or agent with whom it contracts to carry out the provisions of the Underlying Contract also complies with the provisions of Wis. Stat. §134.98 and any subsequently adopted law regarding mitigation of privacy breaches.

F. **Minimum Necessary.** DI will make reasonable efforts to use, disclose, or request only the minimum amount of Personal Information necessary to accomplish the intended purpose and shall comply with regulations issued pursuant to HIPAA and HITECH. Internal disclosure of such information to employees of DI shall be limited only to those employees who need the information and only to the extent necessary to perform their responsibilities according to the Underlying Contract and this Agreement.

G. **Disclosure to DI's Subcontractors and Agents.** DI shall require any of its agents or subcontractors to provide reasonable assurance, evidenced by written contract, that the agent or subcontractor will comply with the same privacy and security obligations as DI with respect to such Personal Information. Before entering into such a contract with an agent or subcontractor, DI shall obtain from ETF approval of the contract.

H. **Access, Amendment and Disclosure Accounting.**

1. Access. At the direction of ETF, DI agrees to provide access to any Protected Health Information held by DI which ETF has determined to be part of ETF's Designated Record Set, in the time and manner designated by ETF, so that ETF may meet its access obligations under HIPAA and HITECH. All fees related to this access, as determined by DI, are the responsibility of the individual requesting the access.

2. Amendment. At the direction of ETF, DI agrees to amend or correct Protected Health Information held by DI and which ETF has determined to be part of ETF's Designated Record Set, in the time and manner designated by ETF, so that ETF may meet its amendment obligations pursuant to HIPAA and HITECH. All fees related to this amendment, as determined by DI, are the responsibility of the individual requesting the access.

3. Documentation of Disclosures. DI agrees to document such disclosures of Protected Health Information and information related to such disclosures so that ETF may meet its obligations under HIPAA and HITECH.

4. Accounting of Disclosures.

   (a) DI shall maintain a process to provide ETF an accounting of disclosures of Protected Health Information for as long as DI maintains Protected Health Information received from or on behalf of ETF. DI agrees to provide to ETF or to an individual, in a time and manner designated by ETF, information collected in accordance with Subsection 3 above, to permit ETF to properly respond to a request by an individual for an accounting of disclosures pursuant to HIPAA and HITECH.

   (b) Each accounting will provide:

      (i) The date of each disclosure;

(ii) The name and address of the organization or person who received the Protected Health Information;
(iii) A brief description of the Protected Health Information disclosed; and
(iv) For disclosures other than those made at the request of the subject, the purpose for which the Protected Health Information was disclosed and a copy of the request or authorization for disclosure.

(c) For repetitive disclosures which DI makes to the same person or entity, including ETF, for a single purpose, DI may provide:
(i) The disclosure information for the first of these repetitive disclosures;
(ii) The frequency or number of these repetitive disclosures; and
(iii) The date of the last of these repetitive disclosures,
DI will make a log of this disclosure information available to ETF within five (5) business days of ETF's request.

(d) DI need not record disclosure information or otherwise account for disclosures of Protected Health Information if:
(i) The disclosures are allowed under this Agreement or are expressly authorized by ETF in another written document; and
(ii) The disclosures are for one of the following purposes:
i. Treatment, Payment or Health Care Operations that are not made through an Electronic Health Record;
ii. In response to a request from the Individual who is the subject of the disclosed Protected Health Information, or to that Individual's Personal Representative;
iii. Made to persons involved in the health care or payment for the health care of the Individual who is the subject of the disclosed Protected Health Information;
iv. For notification for disaster relief purposes;
v. For national security or intelligence purposes;
vi. As part of a Limited Data Set; or
vii. To law enforcement officials or correctional institutions regarding inmates.

5. Disclosure Tracking Time Periods. Except as otherwise provided in this paragraph, DI must have available to ETF the disclosure information required by this section, but in no case will DI be required to have available information from:

(a) More than six (6) years before ETF's request for the disclosure information; or

(b) Any period during which DI did not provide services to ETF.

6. Disclosure Tracking for Disclosures made through Electronic Health Records: DI only needs to provide disclosures for Treatment, Payment or Health Care Operations made through an Electronic Health Record for three years prior to the date on which the accounting is requested. DI shall provide all information necessary for ETF to provide an accounting that includes all information required by regulations issued pursuant to HIPAA and HITECH.

7. Effective Date: The effective date for accounting required under subsection 6 depends on the date ETF acquires an Electronic Health Record. If ETF had an electronic Health Record as of January 1, 2009, subsection 6 will apply to Protected Health Information disclosures made by ETF on or after January 1, 2014. If ETF does not have an Electronic Health Record as of January 1, 2009, subsection 6 will apply to Protected Health Information disclosures made by ETF after the later of January 1, 2011 or the date ETF acquires an Electronic Health Record.

I. Accounting to ETF and Government Agencies. DI will make its internal practices, books, and records relating to its use and disclosure of Protected Health Information available to ETF to provide to the U.S. Department of Health and Human Services (HHS) in a time and manner designated by HHS for the purpose of determining ETF's compliance with HIPAA and HITECH. DI shall promptly notify ETF of any inquiries made to it by HHS concerning ETF's compliance with HIPAA.

J. **Red Flag Rules.** If applicable to DI, DI shall be responsible for implementation of an Identity Theft Monitoring Policy and procedure to protect Personal Information under the Federal Trade Commission regulations known as the "Red Flag Rules."

PART II –ETF OBLIGATIONS

A. **Changes in Permissions to Use and Disclose Protected Health Information.** ETF shall promptly notify DI of any change in, or revocation of, permission by an individual to use or disclose Protected Health Information, to the extent that such change may affect DI's use or disclosure of such Protected Health Information.

B. **Changes in ETF's Notice of Privacy Practices.** ETF shall provide DI with a copy of ETF's Notice of Privacy Practices and shall notify DI of any change made to the Notice of Privacy Practices, to the extent that such change may affect DI's efforts to comply with this Agreement.

C. **Changes in State Law.** ETF shall notify DI of any relevant change in Wisconsin law, to the extent that such change may affect DI's efforts to comply with this Agreement.

PART III - TERM, TERMINATION AND AMENDMENT

A. **Term.** This Agreement becomes effective on the effective date of the Underlying Contract. The Agreement is co-extensive with the term of the Underlying Contract, including any extensions made to the original Underlying Contract.

B. **Termination for Breach.** ETF shall have the right to terminate the Underlying Contract and this Agreement if DI, by pattern or practice, materially breaches any provision of this Agreement.

C. **Reasonable Steps to Cure Breach.** In addition to the right to terminate this Agreement and Underlying Contract pursuant to section B, above, ETF may provide DI with an opportunity to cure the material breach. If these efforts to cure the material breach are unsuccessful, as determined by ETF in its sole discretion, ETF may terminate the Underlying Contract and this Agreement, as soon as administratively feasible.

D. **Effect of Termination: Return or Destruction of Protected Health Information.**

Upon termination, cancellation, expiration, or other conclusion of the Agreement, DI shall:

1. Return to ETF or, if return is not feasible, destroy all Personal Information in whatever form or medium that DI received from or created on behalf of ETF. This provision shall also apply to all Personal Information that is in the possession of subcontractors or agents of DI. In such case, DI shall retain no copies of such information, including any compilations derived from and allowing identification of Personal Information. DI shall complete such return or destruction as promptly as possible, but not more than thirty (30) days after the effective date of the conclusion of this Agreement. Within such thirty (30) day period, DI shall certify on oath in writing to ETF that such return or destruction has been completed.

2. If DI destroys Personal Information, it shall be done with the use of technology or methodology that renders the Personal Information unusable, unreadable, or undecipherable to unauthorized individuals as specified by HHS in HHS guidance for the destruction of Protected Health Information. Acceptable methods for destroying Personal Information include: (i) paper, film, or other hard copy media shredded or destroyed in order that Personal Information cannot be read or reconstructed; and (ii) electronic media cleared, purged or destroyed consistent with the standards of the National Institute of Standards and Technology (NIST). HHS specifically excluded redaction as a method of destruction of Protected Health Information, unless the information is properly redacted so as to be fully de-identified.

3. If DI believes that the return or destruction of Personal Information is not feasible, DI shall provide written notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction is not feasible, DI shall extend the protections of this Agreement to Personal Information received from or created on behalf of ETF, and limit further uses and disclosures of such Personal Information, for so long as DI maintains the Personal Information.

E. **Agreement to Amend Agreement.** The parties to this contract acknowledge that federal laws relating to transactions, security and privacy are rapidly evolving and that amendment to this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, HITECH and their implementing regulations. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA, HITECH and applicable federal regulations. If this Agreement is not amended by the effective date of any final regulation or amendment to final regulations with respect to HIPAA and HITECH, this Agreement will automatically be amended on such effective date such that the obligations they impose on DI remain in compliance with the regulations then in effect.

PART IV – GENERAL PROVISIONS

A. **Conflict.** The provisions of this Agreement override and control any conflicting provision of the Underlying Contract. All non-conflicting provisions of the Underlying Contract remain in full force and effect.

B. **Election to Not Treat As Representative.** Nothing in this Agreement shall be construed to limit the discretion of ETF, under 45 C.F.R. § 164.502 (g) (5), to elect not to treat a person as the representative of an individual.

C. **No Third Party Beneficiaries**. Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any entity other than ETF and DI, any rights, remedies, obligations or liabilities whatsoever.

D. **Documentation.** All documentation that is required by this Agreement or by 45 C.F.R. Part 164 will be retained by DI for six (6) years from the date of creation or when it was last in effect, whichever is longer.

E. **Survival.** The parties' obligations and rights, with respect to DI's engagement to provide services, will be unaffected by the termination of the Underlying Contract and this Agreement. In particular, the provisions of Part III, Sections D and E, and this section, shall survive termination of the Underlying Contract and this Agreement.